



United States Department of the Interior



BLM MOU NO. CA-610-08-01

MEMORANDUM OF UNDERSTANDING

Between the

BUREAU OF LAND MANAGEMENT
CALIFORNIA DESERT DISTRICT OFFICE

And the

FISH AND WILDLIFE SERVICE
VENTURA and CARLSBAD OFFICE

Regarding the

CALIFORNIA DESERT DISTRICT RENEWABLE ENERGY
CONSULTATION AGREEMENT

U.S. Department of the Interior
Bureau of Land Management and Fish and Wildlife Service
**CALIFORNIA DESERT DISTRICT RENEWABLE ENERGY
CONSULTATION AGREEMENT**
January 2008

A. PURPOSE

The purpose of this agreement is to promote an effective and cooperative process to conduct consultation under section 7(a)(2) of the Endangered Species Act regarding renewable energy projects in the California Desert District. The agreement is between the Bureau of Land Management's California Desert District (Bureau) and the Fish and Wildlife Service's Ventura Fish and Wildlife Office and Carlsbad Fish and Wildlife Office (Service). It addresses all aspects of the section 7(a)(2) process regarding federally listed, proposed, and candidate species within the California Desert District. This agreement will define the process, products, actions, time frames, and expectations of the Bureau and Service while working together to complete section 7(a)(2) consultations and will serve as a guiding document throughout the consultation process.

B. NEED FOR CONSULTATION AGREEMENT

The Bureau has received numerous right-of-way applications for solar, wind, and geothermal energy development projects in all field offices of the California Desert District. Some of these projects have the potential to affect federally listed species and may require formal consultation under section 7(a)(2) of the Endangered Species Act. Because the Bureau and Service anticipate increased workload associated with consultation on these projects, we are proposing this consultation strategy to ensure efficient completion of the process. This agreement and the associated reimbursable agreement¹ will establish a mutually agreeable process for consultation on renewable energy projects in the California Desert District.

The Service will give projects covered by this agreement and the associated reimbursable agreement priority status when reimbursable funds are available. Priority can be guaranteed when funding provided to the Service for proposed projects covered by this agreement are sufficient to cover the full salary of a full time wildlife biologist. If this is not possible, the Service will do its best to focus attention, as possible, on prioritizing these projects. The reimbursable agreement contains a list of projects that it covers. The Bureau and Service can modify this list of projects at any point through mutual consent.

C. CONSULTATION ACTIONS

The actions being considered are proposed renewable energy projects within the California Desert District that have an established Federal nexus and that may affect federally listed species. Although development of these projects may affect some private lands, these lands will

¹ The associated reimbursable agreement between the Bureau and Service identifies a list of projects covered by that agreement and establishes an estimated cost for consultations. The reimbursable agreement will govern cost recovery for all renewable energy projects for which the Service is receiving funds.

comprise a small fraction of the total area of project development. In the event that a project will affect both public and private lands, consultation will apply to the entire project area.

D. OPERATIONS

Time frames and commitments made in this portion of the consultation agreement are contingent on the specific details of each proposed project. Proposed projects in more ecologically sensitive areas may result in modified time frames and additional staffing needs. This may result in a need for additional reimbursable funds to efficiently process such applications.

For wind energy projects:

1. The California Energy Commission and California Department of Fish and Game currently identifies general guidelines (www.energy.ca.gov/renewables/06-OII-1/documents/index.html) for reducing impacts to birds and bats when implementing wind power projects. The Bureau should review these guidelines and any available Service guidelines with applicants and initiate discussions with the Service regarding pre-project migratory bird surveys at the beginning of meteorological (met) tower testing on a proposed site to receive site-specific recommendations. Because met tower testing is performed far ahead of an application for a project site right-of-way, these activities would not be covered under the reimbursable agreement.

For all renewable energy projects:

1. The Bureau will initiate informal consultation with the Service when it accepts a right-of-way application from an applicant. At that time, the Bureau will provide the appropriate Service office with a basic description of the proposed action, which will include, at a minimum, the location, acreage, and basic design of the renewable energy power plant.
2. The Bureau and Service will establish reimbursable accounts at the beginning of informal consultation for any projects covered under the reimbursable agreement. When informal consultation is initiated on a project covered by the reimbursable agreement, the Service will begin billing against the account for all initial work (i.e. species lists, technical assistance, etc.).
3. The appropriate Service office will provide a species list for the proposed power plant to the Bureau within 30 days of the initiation of informal consultation. At that time, the Service will also provide to the Bureau, as technical assistance, any additional issues that it considers important to consider during the planning process; these issues may include, at a minimum, listed species survey protocols, additional migratory bird issues, wetlands, sensitive species, and other key resource issues.

The Service will provide guidance as to the appropriate survey protocols for estimating the number of listed species on a given project site. The Bureau and Service will endeavor to

establish consistent survey protocols for species on all sites, but differences in project sites and project activities may require some modifications.

4. The Bureau and Service agree that staff will meet at any time between the time the Bureau receives an application and issuance of a biological opinion, if necessary, to clarify issues related to the proposed action, to develop site-specific protective measures, and to undertake other coordination that may be necessary to facilitate the consultation process.
5. The Bureau will request formal consultation with the Service on each proposed renewable energy project following completion of public scoping for the project's Environmental Impact Statement and development of a preferred alternative. At a minimum, each request for formal consultation will include:
 - a. A complete description of the proposed action (preferred alternative);
 - b. A complete description of the proposed conservation measures that will be implemented during construction and operation of the facility;
 - c. A current list of renewable energy plants that have undergone section 7(a)(2) consultation with the following information, to be updated as soon as new information becomes available: name of project; its location; its projected or actual acreage; the projected or actual number of listed animals taken; an analysis of the effectiveness of proposed protective measures; and the results of any actions that the Bureau has required of the applicant to compensate for any residual adverse effects of renewable energy plants to listed species and their habitat;
 - d. A defined action area, as described in 50 Code of Federal Regulations 402.02. The Bureau and Service will define the action area during the course of informal consultation;
 - e. A description of the condition of habitat, including any designated critical habitat, and the results of all surveys for listed species in the action area;
 - f. A description of the potential effects of the action on the listed species and any designated critical habitat. This description will include the potential effects of all ancillary facilities; and
 - g. A description of the cumulative effects, as described in 50 Code of Federal Regulations 402.02, which are those effects of future State or private activities, not involving Federal activities, that are reasonably certain to occur within the action area of the Federal action subject to consultation. Information relevant to the cumulative effects will be gathered from the best available sources of such information, such as other tribal, State, or local governments that have the ability to approve future actions within the action area.

6. The Service will provide the Bureau with comments on the draft Environmental Impact Statement for each project. The Bureau and Service can mutually agree to eliminate this requirement on some projects if it is not needed.
7. The Service will provide a draft biological opinion for a given project to the Bureau 30 days prior to the end of the public comment period for the Environmental Impact Statement that covers the project provided that the request for formal consultation was received at least 30 days prior to the beginning of the public comment period. The Service and the Bureau may agree to modify the deadline for delivery of the draft biological opinion if significant changes to the project description are likely to occur because of comments received or if the request for formal consultation was received late. If this occurs, they will also agree on modifications to the time frames for delivery of the final biological opinion. The Service will provide the Bureau with both hard (or PDF) and Word copies of the draft biological opinion.
8. The Bureau may provide the draft biological opinion to the California Energy Commission, California Department of Fish and Game, and applicant; if it does so, it will also provide a time frame within which comments on the biological opinion must be returned to the Bureau and notify the Service of the schedule. The Bureau will review all comments on the draft biological opinion and clearly indicate to the Service those comments that the Bureau wishes to see incorporated into the final biological opinion. The Bureau will provide the Service with comments on the biological opinion within 30 days following receipt of the draft biological opinion. If comments are not received before the end of that period, the Service will contact the Bureau to determine if it can finalize the biological opinion.
9. The Service will provide a final biological opinion to the Bureau within 15 days of receiving comments on the draft biological opinion.

E. DURING CONSULTATION, THE BUREAU WILL PROVIDE:

- Funding to the Service for the expedited completion of the section 7(a)(2) consultation process for those projects covered under the reimbursable agreement;
- Bureau personnel who will provide additional site-specific information when requested;
- Supplemental information requested by the Service or a reason why this information is not available;
- A prioritized list of the renewable energy projects that it has requested consultation for if needed by the Service and;
- Written notification, specific to each action, of any designated non-federal representatives and of the degree to which these individuals have been authorized to participate in the consultation process. The Bureau anticipates several requests for applicant status from the

project proponents. Pursuant to Bureau policy, these applicants have rights to review actions considered in the biological opinion.

F. DURING CONSULTATION, THE SERVICE WILL PROVIDE:

- Service personnel who will assist in conducting informal and formal consultation;
- Service personnel to review draft documents transmitted by the Bureau. Input from the Service may be written or verbal, as determined to be most efficient by the agencies;
- Notification to the Bureau, at the earliest possible time, if it anticipates being unable to meet any agreed-upon time frame; and
- When requested, updates on the status of biological opinions.

G. THE BUREAU AND SERVICE MUTUALLY AGREE TO:

- Cooperate as partners in the commitment each agency has made to the process and timelines as outlined;
- Cooperate in developing and completing the consultation. This cooperation includes, but is not limited to, informal and open exchanges of information and data needs, and expeditious response to requests for information or clarification; and
- Cordially and expediently elevate disagreements between staff to ensure that timelines are met. For the Ventura Fish and Wildlife Office, disagreements will initially be elevated to the Assistant Field Supervisor, Desert Division; for the Carlsbad Fish and Wildlife Office, disagreements will initially be elevated to the Assistant Field Supervisor, South Division; for the Bureau, disagreements will initially be elevated to the Natural Resources Branch Chief for the Bureau Field Office that is handling the consultation.

H. GENERAL PROVISIONS

- This consultation agreement and attached reimbursable agreement can be amended by mutual agreement by both parties;
- Meeting the time lines outlined in this consultation agreement is contingent upon the availability of adequate funding and sufficient staff for both agencies, pursuant to the conditions described in the attached reimbursable agreement; and
- This agreement is intended only to improve the internal management of the Bureau of Land Management and Fish and Wildlife Service and is neither intended to nor creates any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, and any other person.

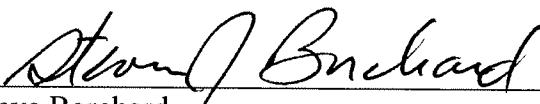
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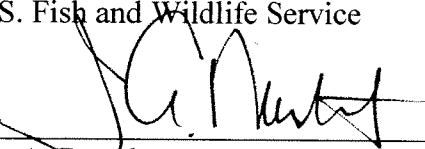
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